

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. )

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT**  
**WITH C.B. GILBERT A/K/A CLARENCE GILBERT D/B/A 3 G CATTLE CO.**  
**AND 3 G CATTLE CO.**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Eastern Livestock Co., LLC (“Debtor”), by counsel, hereby files this motion (the “Settlement Motion”) requesting the Court's approval of a compromise and settlement of claims between the Trustee and C.B. Gilbert a/k/a Clarence Gilbert d/b/a 3 G Cattle Co. (“Gilbert”) and 3 G Cattle Co. (“3 G Cattle”) (collectively the “Defendants”) pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release in the form attached hereto as **Exhibit A** (the “Settlement Agreement”). In support of this Settlement Motion, the Trustee respectfully represents the following:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On July 16, 2014, the Trustee initiated an adversary proceeding against Gilbert and 3 G Cattle as adversary proceeding number 14-59019, asserting claims to recover amounts due and owing as a result of certain loans and/or advanced made to Gilbert and/or 3 G Cattle prior to the Petition Date in an amount of \$26,800.00. Thereafter, Gilbert and 3 G Cattle filed a counterclaim against the Trustee for work performed or services rendered by Gilbert and/or 3 G Cattle for the Debtor prior to the Petition Date.

### **The Settlement**

4. To avoid the cost, expense, and delay of litigation, the Defendants are willing to make immediate payment of \$1,500.00 (the “Settlement Amount”) in satisfaction of the claim. The Defendants have also agreed to withdraw, waive, and release any and all claims related to this case, the Debtor, or the estate. The Defendants have already tendered the full Settlement Amount to the Trustee’s counsel.

5. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Collateral Fund (as that term is defined in the Estate’s confirmed Chapter 11 Plan).

6. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

7. After the filing of the adversary proceeding, the Trustee obtained information from the Defendants as well as from the Debtor’s own records that significantly reduced the indebtedness owed by Gilbert and 3 G Cattle. The Defendants also provided financial records, demonstrating an inability to pay a judgment against them.

8. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Defendants pursuant to the terms and conditions set forth in the Settlement Agreement.

### **Basis for Relief**

9. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

*In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d at 426 (citations omitted).

10. Although the Trustee believes there is legal and factual support for the claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the claim, (ii) the probability of success in prosecuting the claim in light of the asserted defenses, (iii) the best interests of the Debtor's estate and its creditors, and (iv) the likelihood of collection.

11. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

12. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Jay P. Kennedy  
Jay P. Kennedy (#5477-49)  
Counsel for James A. Knauer,  
Chapter 11 Trustee  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204-5125  
Telephone: (317) 777-7428  
jpk@kgirlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2015, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt  
davidabt@mwt.net

Amelia Martin Adams  
aadamsm@dlgfir.com

John W. Ames  
james@bgdlegal.com

Kay Dee Baird  
kbaird@kdlegal.com

Christopher E. Baker  
cbaker@thbklaw.com

Robert A. Bell  
rabell@vorys.com

C. R. Bowles, Jr  
cbowles@bgdlegal.com

David W. Brangers  
dbrangers@lawyer.com

Steven A. Brehm  
sbrehm@bgdlegal.com

Kent A Britt  
kabritt@vorys.com

Kayla D. Britton  
kayla.britton@faegrebd.com

Joe Lee Brown  
Joe.Brown@Hardincounty.biz

Lisa Koch Bryant  
courtmail@fbhlaw.net

John R. Burns, III  
john.burns@faegrebd.com

John R. Carr, III  
jrciii@acs-law.com

Deborah Caruso  
dcaruso@daleeke.com

Ben T. Caughey  
ben.caughey@icemiller.com

Bret S. Clement  
bclement@acs-law.com

Joshua Elliott Clubb  
joshclubb@gmail.com

Jason W. Cottrell  
jwc@stuartlaw.com

Kirk Crutcher  
kcrutcher@mcs-law.com

Jack S. Dawson  
jdawson@millerdollarhide.com

Dustin R. DeNeal  
dustin.deneal@faegrebd.com

Laura Day Delcotto  
ldelcotto@dlgfir.com

David Alan Domina  
dad@dominalaw.com

Daniel J. Donnellon  
ddonnellon@ficlaw.com

Trevor L. Earl  
tearl@rwsvlaw.com

Shawna M. Eikenberry  
shawna.eikenberry@faegrebd.com

Jeffrey R. Erler  
jerler@ghjhlaw.com

William K. Flynn  
wkflynn@strausstroy.com

Robert Hughes Foree  
robertforee@bellsouth.net

Sandra D. Freeburger  
sfreeburger@dsf-atty.com

Melissa S. Giberson  
msgiberson@vorys.com

Thomas P. Glass  
tpglass@strausstroy.com

Patrick B. Griffin  
patrick.griffin@kutakrock.com

Terry E. Hall  
terry.hall@faegrebd.com

Paul M. Hoffman  
paul.hoffmann@stinsonleonard.com

John David Hoover  
jdhoover@hooverhull.com

John Huffaker  
john.huffaker@sprouselaw.com

Jeffrey L Hunter  
jeff.hunter@usdoj.gov

Jay Jaffe  
jay.jaffe@faegrebd.com

James Bryan Johnston  
bjtexas59@hotmail.com

Todd J. Johnston  
tjohnston@mcjllp.com

Jill Zengler Julian  
Jill.Julian@usdoj.gov

Jay P. Kennedy  
jpk@kgirlaw.com

Edward M King  
eking@fbtlaw.com

James A. Knauer  
jak@kgirlaw.com

Erick P. Knoblock  
eknoblock@daleeke.com

Theodore A. Konstantinopoulos  
ndohbky@jbandr.com

Randall D. LaTour  
rdlatour@vorys.com

David A. Laird  
david.laird@moyewhite.com

David L. LeBas  
dlebas@namanhowell.com

Martha R. Lehman  
mlehman@kdlegal.com

Scott R. Leisz  
sleisz@bgdlegal.com

Elliott D. Levin  
edl@rubin-levin.net

Kim Martin Lewis  
kim.lewis@dinslaw.com

James B. Lind  
jblind@vorys.com

Karen L. Lobring  
lobring@msn.com

Jason A. Lopp  
jlopp@wyattfirm.com

John Hunt Lovell  
john@lovell-law.net

Harmony A. Mappes  
harmony.mappes@faegrebd.com

Kelly Greene McConnell  
lisahughes@givenspursley.com

William Robert Meyer, II  
rmeyer@stites.com

Allen Morris  
amorris@stites.com

Matthew Daniel Neumann  
mneumann@hhclaw.com

Matthew J. Ochs  
kim.maynes@moyewhite.com

Ross A. Plourde  
ross.plourde@mcafeetaft.com

Timothy T. Pridmore  
tpridmore@mcjllp.com

Eric W. Richardson  
ewrichardson@vorys.com

Mark A. Robinson  
mrobinson@vhlaw.com

Joseph H. Rogers  
jrogers@millerdollarhide.com

Niccole R. Sadowski  
nsadowski@thbkclaw.com

Ivana B. Shallcross  
ishallcross@bgdlegal.com  
James E. Smith, Jr.  
jsmith@smithakins.com

Joshua N. Stine  
kabritt@vorys.com

Meredith R. Theisen  
mtheisen@daleeke.com

Christopher M. Trapp  
ctrapp@rubin-levin.net

Andrew James Vandiver  
avandiver@aswdlaw.com

Charles R. Wharton  
Charles.R.Warton@usdoj.gov

Jason P. Wischmeyer  
jason@wischmeyerlaw.com

John Frederick Massouh  
john.massouh@sprouselaw.com

James Edwin McGhee  
mcghee@derbycitylaw.com

Kevin J. Mitchell  
kevin.mitchell@faegrebd.com

Judy Hamilton Morse  
judy.morse@crowedunlevy.com

Walter Scott Newbern  
wsnewbern@msn.com

Jessica Lynn Olsheski  
jessica.olsheski@justice-law.net

Brian Robert Pollock  
bpollock@stites.com

Anthony G. Raluy  
traluy@fbhlaw.net

Joe T. Roberts  
jratty@windstream.net

Jeremy S. Rogers  
Jeremy.Rogers@dinslaw.com

James E. Rossow  
jim@rubin-levin.net

Thomas C. Scherer  
tscherer@bgdlegal.com

Sarah Elizabeth Sharp  
sarah.sharp@faegrebd.com

William E. Smith, III  
wsmith@k-glaw.com

Andrew D. Stosberg  
astosberg@lloydmc.com

John M. Thompson  
john.thompson@crowedunlevy.com

Chrisandrea L. Turner  
clturner@stites.com

Andrea L. Wasson  
andrea@wassonthornhill.com

Sean T. White  
swhite@hooverhull.com

James T. Young  
james@rubin-levin.net

Michael W. McClain  
mmccclain@mcclaindeweese.com

Brian H. Meldrum  
bmeldrum@stites.com

Terrill K. Moffett  
kendalcantrell@moffettlaw.com

Erin Casey Nave  
enave@taftlaw.com

Shiv Ghuman O'Neill  
shiv.oneill@faegrebd.com

Michael Wayne Oyler  
moyler@rwsvlaw.com

Wendy W. Ponader  
wendy.ponader@faegrebd.com

Eric C. Redman  
ksmith@redmanludwig.com

David Cooper Robertson  
crobertson@stites.com

John M. Rogers  
johnr@rubin-levin.net

Steven Eric Runyan  
ser@kgrlaw.com

Stephen E. Schilling  
seschilling@strausstroy.com

Suzanne M Shehan  
suzanne.shehan@kutakrock.com

Amanda Dalton Stafford  
ads@kgrlaw.com

Matthew R. Strzynski  
indyattorney@hotmail.com

Kevin M. Toner  
kevin.toner@faegrebd.com

U.S. Trustee  
ustpreion10.in.ecf@usdoj.gov

Jennifer Watt  
jwatt@kgrlaw.com

Michael Benton Willey  
michael.willey@ag.tn.gov

John D Dale, Jr.  
Johndaleatty@msn.com

I further certify that on June 11, 2015, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Thomas Richard Alexander, II  
tra@rgba-law.com

/s/ Jay P. Kennedy  
Jay P. Kennedy, Attorney No. 5477-49